

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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BOSTON ALLIANCE OF GAY, LESBIAN,  
BISEXUAL AND TRANSGENDER YOUTH  
(BAGLY); CALLEN-LORDE COMMUNITY  
HEALTH CENTER; CAMPAIGN FOR  
SOUTHERN EQUALITY; DARREN LAZOR;  
EQUALITY CALIFORNIA; FENWAY HEALTH;  
INDIGENOUS WOMEN RISING; NO/AIDS  
TASK FORCE (D/B/A CRESCENTCARE);  
AND TRANSGENDER EMERGENCY FUND OF  
MASSACHUSETTS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HEALTH  
AND HUMAN SERVICES; XAVIER BECERRA,  
IN HIS OFFICIAL CAPACITY AS  
SECRETARY OF THE U.S. DEPARTMENT  
OF HEALTH AND HUMAN SERVICES;  
ROBINSUE FROHBOESE, IN HER OFFICIAL  
CAPACITY AS ACTING DIRECTOR, OFFICE  
FOR CIVIL RIGHTS, U.S. DEPARTMENT  
OF HEALTH AND HUMAN SERVICES; AND  
CHIQUITA BROOKS-LASURE, IN HER  
OFFICIAL CAPACITY AS ADMINISTRATOR  
FOR THE CENTERS FOR MEDICARE AND  
MEDICAID SERVICES, U.S. DEPARTMENT  
OF HEALTH AND HUMAN SERVICES,

Defendants.

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Civil Action  
No. 20-11297-PBS

**MEMORANDUM AND ORDER ON MOTION TO REMAND**

October 29, 2021

Saris, D.J.

After hearing, the Court **DENIES** the Defendants' motion to remand the challenged provisions to the agency and **ALLOWS** the motion to stay the case, without prejudice to reopening, until the end of April 2022.

When an agency requests a voluntary remand to reconsider its previous position without confessing error, “the reviewing court has discretion over whether to remand.” SKF USA Inc. v. United States, 254 F.3d 1022, 1029 (Fed. Cir. 2001). While there is a preference for “allow[ing] agencies to cure their own mistakes,” Ethyl Corp. v. Browner, 989 F.3d 522, 524 (D.C. Cir. 1993), courts “consider whether remand would unduly prejudice the non-moving party,” Util. Solid Waste Activities Grp. V. EPA, 901 F.3d 414, 436 (D.C. Cir. 2018).

Defendants declare that their reconsideration of the 2020 Rule “is based on a substantial and legitimate need to ensure the 2020 Rule’s provisions adequately advance the Administration’s policy as articulated in EO 13988,” Dkt. 68 at ¶ 13, but they cannot guarantee anything other than that the new final rule “may resolve or moot some or all of the claims that remain subject to review in this litigation.” Dkt. 67 at 3 (emphasis added). Plaintiffs, by contrast, “have shown changes in coverage by several insurers and face a risk of economic injury from reduced reimbursements now.” Boston All. Of Gay, Lesbian, Bisexual & Transgender Youth (BAGLY) v. U.S. Dep’t of Health & Hum. Servs., No. 20-11297, 2021 WL 3667760, at \*14 (D. Mass. Aug. 18, 2021). This risk of harm, in the face of uncertainty that the proposed rule will address, let alone resolve, all the claims before the Court, cautions against remand.

In the alternative, the Defendants’ move to stay the case pending the Notice of Proposed Rulemaking in April 2022. “It is apodictic that federal courts possess the inherent power to stay proceedings for prudential reasons.” Microfinancial, Inc. v. Premier Holidays Int’l.,

Inc., 385 F.3d 72, 77 (1st Cir. 2004); see also Levy v. Certified Grocers of California, Ltd., 593 F.2d 857, 863 (9th Cir. 1979) (“A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case.”). In the absence of a showing of irreparable harm, it makes little sense for the Court to require merits briefs and expend resources resolving complicated legal issues that may well be moot around the same time this Court would reach a decision. The Court allows this motion to stay the case until the end of April 2022 to save both judicial and administrative resources. This stay is without prejudice to moving for relief upon a showing of irreparable harm. A status conference is scheduled for May 5, 2022 at 2:30pm.

SO ORDERED.

/s/ PATTI B. SARIS  
Hon. Patti B. Saris  
United States District Judge